MONTANA LEGISLATIVE HISTORY

Chapter 289 1985

Bill HB 784 S_____ Original bill & history ___C

H. Committee on Natural Resources S. Committee on Natural Resources

Hearing Date(s)			Hearing Date(s)		
	_____	___C		_____	___C
H&V	2/15	___C	H V	3/18	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

3/22	2ND READING CONCURRED	48	0
3/25	3RD READING CONCURRED	48	1
	RETURNED TO HOUSE		
3/28	SIGNED BY SPEAKER		
3/28	SIGNED BY PRESIDENT		
3/29	TRANSMITTED TO GOVERNOR		
4/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 337 EFFECTIVE DATE: 4/02/85		

HB 783 INTRODUCED BY MILES, VINCENT, ET AL.
MONTANA LONG-TERM CARE RESIDENTS' BILL OF RIGHTS ACT
BY REQUEST OF DEPARTMENT OF SOCIAL & REHABILITATION SERVICES

2/11	INTRODUCED		
2/11	REFERRED TO HUMAN SERVICES & AGING		
2/11	FISCAL NOTE REQUESTED		
2/15	FISCAL NOTE RECEIVED		
2/20	HEARING		
2/22	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/25	2ND READING PASS AS AMENDED	98	0
2/26	3RD READING PASS	98	0
	TRANSMITTED TO SENATE		
3/04	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/11	HEARING		
3/28	ADVERSE COMMITTEE REPORT	31	18
3/29	BILL KILLED		

HB 784 INTRODUCED BY HOLLIDAY, HALLIGAN
TO REVISE STRIP MINE PERMIT REVIEW PROCEDURES
BY REQUEST OF DEPARTMENT OF STATE LANDS

2/11	INTRODUCED		
2/11	REFERRED TO NATURAL RESOURCES		
2/15	HEARING		
2/16	COMMITTEE REPORT-BILL DO PASS		
2/18	2ND READING PASS AS AMENDED	98	0
2/20	3RD READING PASS	99	1
	TRANSMITTED TO SENATE		
2/22	REFERRED TO NATURAL RESOURCES		
3/18	HEARING		
3/19	COMMITTEE REPORT-BILL CONCURRED		
3/23	2ND READING CONCURRED	49	0
3/26	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/28	SIGNED BY SPEAKER		
3/28	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 289 EFFECTIVE DATE: 10/01/85		

HB 785 INTRODUCED BY ADDY, MCCORMICK, ET AL.
CHANGING COMMENCEMENT DATE FOR PAYMENT OF CERTAIN RETIREMENT ALLOWANCES

HOUSE BILL NO. 784

INTRODUCED BY [signature]

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE STRIP MINE PERMIT APPLICATION REVIEW PROCEDURES; REVISING TIME FRAMES; AMENDING SECTION 82-4-231, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by his operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which shall contain the reclamation plan, shall be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items which the application must

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address. The application shall be presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, he shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed

operation ~~after--adequate--public--notice~~ within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference shall not preclude the department from proceeding with its review of the application as specified in subsection (8). ~~The-department-shall-notify-the applicant--by--certified--or-registered-mail-within-120-days after-receipt-of-the-complete-application-if-it-is-or-is-not acceptable.-The--department--may--extend--the--120--days--an additional--120--days--upon--notification-of-the-operator-in writing.-The-department-shall-make-written-findings-granting or-denying-the-permit-or-revision-application-in-whole-or-in part.-If-the-application-is-not-acceptable,--the--department shall-set-forth-the-reasons-why-it-is-not-acceptable,-and-it may--propose--modifications,--delete--areas,--or--reject-the entire-application.-A-landowner,--operator,--or--any--person with-an-interest-that-is-or-may-be-adversely-affected-may-by written--notice--request-a-hearing-by-the-board.-The-hearing shall-be-held-within-30-days-of-the-request.--No-person--who~~

~~presided--at--the--informal-conference-may-either-preside-at the-hearing-or-participate--in--the--decision--thereon.--For purposes---of---the---hearing,--the--board--may--order--site inspections-of-the-area-pertinent-to--the--application.--The board--shall--notify--the--person-by-certified-or-registered mail-and-all-other-persons-by-regular-mail--within--20--days after--the--hearing--of-its-decision.-Every-reclamation-plan shall-be-subject-to-annual-review-and-modification.~~

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-228. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined

to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement within 365 days of the date of notice provided pursuant to subsection (5).

(d) Within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the

proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 10 days of the informal conference.

(f) The department shall prepare written findings granting or denying the permit or major revision application in whole or in part no later than 45 days from the date the application is determined acceptable or from the publication of the final environmental impact statement, whichever occurs later. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when such concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing by the board. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing shall be held within 30 days of the request. For purposes of a hearing, the board may order site inspections of the area pertinent to the application. The board shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon.

~~(3)~~(10) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas,

constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the board may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface-water and ground-water systems both during and after strip- or underground-coal-mining operations and during

reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to (ii)(A) of this subsection prior to commencement of strip- or underground-mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large

settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) such other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the department determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(q) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

~~(4)~~(11) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or

underground-mining operation in such a manner as to protect areas outside the permit area."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the board of land commissioners or the department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

-End-

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 15, 1985

The meeting of the Natural Resources committee was called to order by Chairman Dennis Iverson at 3:20 p.m. in Room 312-1 of the State Capitol.

ROLL CALL: All members of the committee were present except Rep. John Harp, who was excused.

HOUSE BILL 769: Rep. Gay Holliday, District 31, introduced HB 769, which she sponsored. She explained that the bill would revise bond release procedures under the Montana Strip and Underground Mine Reclamation Act by allowing portions of a reclamation bond to be released as reclamation progress is made. Such release is allowed under federal regulation law, and this bill would put Montana in line with federal policy, she explained.

Jim Mockler, representing the Montana Coal Council, spoke in favor of HB 769, saying that his group agrees with the procedures set up to release portions of bonds. The practice of holding the entire original bond amount poses a financial burden to the mining companies, but provides no real value to the state, he said.

Dennis Hemmer, representing the department of state lands, said the department supports this legislation. A copy of his testimony is attached hereto as Exhibit 1.

Lorraine Gillies spoke in favor of HB 769 on behalf of the Montana Farm Bureau Federation. A copy of her testimony is attached as Exhibit 2.

Tom Ebzery, an attorney for NERCO, said that company supports passage of HB 769.

No opponents rose against HB 769, and there were no questions from committee.

HOUSE BILL 698: HB 698 was introduced in committee by sponsor Rep. Bob Ream, District 54. He said the bill is a compromise which would amend the hard rock reclamation act, specifically addressing the issues of application for operating permits, inclusion of groundwater information, and citizen participation in the appeal procedure. He also asked that the committee make a minor amendment to the bill. A copy of that proposed change is attached as Exhibit 3.

Paul Hawks, a Melville resident speaking on behalf of the Northern Plains Resource Council, spoke in support of HB 698. A copy of his testimony is attached as Exhibit 4.

Dennis Hemmer supported the legislation on behalf of the department of state lands. He said the bill clarifies the requirements of the hard rock mining act, and virtually all of the provisions in it are required elsewhere in statute. A copy of his testimony is attached as Exhibit 5.

Robert Dello-Russo, of Heron, spoke in support of HB 698. He indicated concern with proposed development by ASARCO in northwestern Montana, and said the legislature should act now to define workable and enforceable regulation of future mining activity. A copy of his testimony is attached as Exhibit 6.

George Ochenski, representing the Montana Environmental Information Center, told the committee that HB 698 is a compromise bill that represents a great deal of work by several interest groups. He asked the committee to consider that work carefully when proposing any amendments to the bill. A copy of his testimony is attached hereto as Exhibit 7.

Gary Langley, executive director of the Montana Mining Association, said his group neither supports nor opposes HB 698. He said the bill is unnecessary because mining companies operating in the state are already meeting its provisions. A copy of his testimony is attached as Exhibit 8.

Richard Parks, operator of Parks' Fly Shop in Gardiner, rose in support of HB 698, noting that adequate reclamation is vital to the water quality on which his business depends. A copy of his testimony is attached as Exhibit 9.

No opponents rose against HB 698, and there were no questions from the committee.

HOUSE BILL 784: Rep. Gay Holliday, District 31, introduced HB 784, which she sponsored. The bill would revise strip mine permit application review procedures to provide administrative completeness and acceptibility, she said.

Dennis Hemmer of the department of state lands spoke in support of the legislation, which he said would provide specific guidance to the public, industry and the department. He said HB 784 is an example of "good government." A copy of his testimony is attached hereto as Exhibit 10.

Lorraine Gillies, representing the Montana Farm Bureau Federation, supported HB 784. A copy of her testimony is attached as Exhibit 11.

Jim Mockler of the Montana Coal Council said HB 784 is good legislation, which provides business with the guidelines needed to plan activities.

Tom Ebzery of NERCO said HB 784 is a "giant step in the right direction." He said the bill sets out "clearly defined time frames, which are essential when large captial investment is involved."

Russ Brown of the Northern Plains Resource Council said that group supports passage of HB 784.

Pat Wilson, speaking on behalf of MontCo, said that group supports the streamlining of the application and permit process set out in HB 784.

There were no questions from the committee, and the hearing on HB 784 was closed.

HOUSE BILL 755: Rep. Dave Brown, District 72, introduced HB 755, which he sponsored. He said the bill would amend fees charged for baseline EIS work and similar application procedures for facility siting permits.

Laurence Siroky, of the department of natural resources and conservation, said the department requested and supports HB 755. A copy of his testimony is attached as Exhibit 12.

Jim Mockler of the Montana Coal Council said the coal companies are in concurrence with the provisions of the bill.

No opponents rose against the bill, and the floor was opened to questions from committee.

Rep. Addy asked Mr. Siroky how many permit applications have been made for facility siting projects costing less than $1 million, and was told that only one facility has been proposed at that price. Virtually all of the facilities proposed in the state have an estimated value of $1 million or more, he said, and would be affected by page 1, line 24 of HB 755.

Hearing was closed on HB 755.

HOUSE JOINT RESOLUTION 25: Rep. Bernie Swift, District 64, introduced HJR 25, which he sponsored. He explained that the resolution asks Montana's congressional delegation to end the 14-year delay of the RARE and RARE II wilderness allocation process by addressing and resolving the issue of how Montana's 5.2 million acres of roadless lands should be managed. The bill does not ask for any specific allocation

Rep. O'Hara withdrew his DO PASS motion and moved DO PASS AS AMENDED on HJR 25, which carried unanimously.

HOUSE BILL 755: Rep. Kadas moved DO PASS, which was unanimously approved.

HOUSE BILL 784: Rep. Driscoll moved DO PASS, which carried unanimously.

HOUSE BILL 769: Rep. O'Hara moved DO PASS, which carried unanimously.

HOUSE BILL 698: Rep. Raney moved DO PASS. Rep. Raney then moved the amendment proposed by Rep. Ream, which was approved. The DO PASS motion on the bill was carried, with Rep. Driscoll voting no.

HOUSE BILL 362: Rep. Krueger moved DO PASS AS AMENDED on HB 362, which had been amended in executive action on February 11. That motion was carried unanimously. Rep. Krueger then moved the statement of intent, which was also approved by a unanimous vote.

There being no further business before the committee, the meeting was adjourned at 5:10 p.m.

Rep. DENNIS IVERSON, Chairman

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date February 15, 1983

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	X		
DRISCOLL, Jerry	X		
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John			X
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

STANDING COMMITTEE REPORT

February 15, 19 35

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE Bill No. 734

FIRST reading copy (WHITE color)

AN ACT TO GENERALLY REVISE STRIP MINE PERMIT [redacted]

APPLICATION REVIEW PROCEDURES

Respectfully report as follows: That HOUSE Bill No. 734

DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

EXHIBIT 10
2/15/85

TESTIMONY FOR HOUSE BILL 784

FROM DENNIS HEMMER, COMMISSIONER OF STATE LANDS

The Department of State Lands supports H.B. 784 to amend Section 82-4-231, MCA for the following reasons:

1. The amendment provides specific guidance to the public, industry and the Department on how to determine when a strip mine application is "administratively complete" and "acceptable."

2. The amendment provides the public with better defined and statutory public comment periods and subsequent appeal processes.

3. The amendment clearly outlines the time frames that are required for specific phases of the application review; EIS determination and completion; and public notification and comment periods, thus streamlining the decision making process for the public, the applicant, and the state.

4. The amendment addresses concerns raised by citizens groups, industry and the Office of Surface Mining in regard to permit "completeness," "acceptability," review time frames, and application and EIS coordination.

In summary, the passage of this bill would help to streamline the permit decision making process, resolve concerns of applicants, citizen groups and the Office of Surface Mining pertaining to administrative completeness and acceptability and better define the process. The bill represents "good government" and I ask your favorable consideration.

EXHIBIT 11

MONTANA FARM BUREAU FEDERATION

502 South 19th Bozeman, Montana 59715
Phone (406) 587-3153

TESTIMONY BY: Lorraine Gillies

BILL # HB 784 DATE 2/15/85

SUPPORT xxxx OPPOSE

Mr. Chairman, Members of the Committee:

For the record, I'm Lorraine Gillies representing Montana Farm Bureau Federation.

We support HB 784 in its revision and updating of permit application review procedures and time frames, thereby ensuring proper and timely reclamation.

We urge the Committee to give this bill a due pass.

Thank you.

Lorraine Gillies
SIGNED

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
March 18, 1985

The twenty-first meeting of the Senate Natural Resources Committee was called to order at 1:00 p.m. by Chairman Dorothy Eck, March 18, 1985, Room 405, State Capitol Building.

ROLL CALL: All members of the Senate Natural Resources Committee were present.

CONSIDERATION OF HB702: Representative Harbin, sponsor of HB702, stated he is introducing HB702 on behalf of the Department of State Lands. Prior to 1981, the responsibility of managing state forest lands was with the Department of Natural Resources and Conservation (hereafter DNRC). In 1981, this responsibility was shifted to the Department of State Lands. However, some of Montana's statutes were never changed to reflect this shift of responsibility. HB702 simply changes these statutes to reflect this responsibility is now primarily with the Department of State Lands.

PROPONENTS: Mr. Dennis Hemmer, representing the Department of State Lands, submitted written testimony (Exhibit 1) in favor of HB702.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Senator Shaw questioned whether HB702 will have a fiscal impact. Mr. Hemmer replied it would not.

There being no further questions from the committee, the hearing on HB702 was closed.

ACTION ON HB702: Senator Christiaens moved HB702 BE CONCURRED IN. The motion carried.

CONSIDERATION OF HB698: Representative Ream, sponsor of HB698, stated this bill is fairly simple, since the groups involved have worked out the bill ahead of time. Representative Ream explained HB698 provides for groundwater information to be provided with applications for operating permits, a commitment and plan to stabilize dams and dikes, and a mandamus section similar to the one contained in the Strip Mine Act. Section 5 also provides for replacement of damaged water supplies.

PROPONENTS: Mr. Dennis Hemmer, representing the Department of State Lands, submitted written testimony (Exhibit 2) in favor of HB698.

There being no further questions from the committee, Representative Ream closed the hearing on HB698 by stating this bill is not the result of activities taking place at any particular mine.

CONSIDERATION OF HB769: Representative Holliday, sponsor of HB769, submitted written testimony (Exhibit 6) stating the Coal Mine Reclamation Act is not clear regarding procedures and amount of bond money that may be released as reclamation proceeds. HB769 will correct this problem.

PROPONENTS: Mr. Jim Mockler, representing the Montana Coal Council, stated HB769 is a complicated bill, and the language is taken directly from the federal Surface Mine Control and Reclamation Act. HB769 will allow an operator to receive a portion of the bond back. Mr. Mockler stated the Department of State Lands has shown its willingness to work out problems in order to give both parties fair treatment.

Mr. Dennis Hemmer, representing the Department of State Lands, submitted written testimony (Exhibit 7) in favor of HB769.

Ms. Marg Green, representing the Montana Farm Bureau Federation, submitted written testimony (Exhibit 8) in favor of HB769.

Mr. Russ Brown, representing Northern Plains Resource Council, stated his organization worked on HB769 with the Department of State Lands and urged the committee to pass the bill.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Senator Weeding stated it is difficult to read the stricken language on pages 4 and 5 and questioned Mr. Mockler as to how the stricken language read. Mr. Mockler stated the stricken language is very similar to the new language and does not remove any protections.

There being no further questions from the committee, the hearing on HB769 was closed.

CONSIDERATION OF HB784: Representative Holliday, sponsor of HB784, submitted written testimony (Exhibit 9) stating HB784 has two purposes: (1) Administrative completeness and acceptability; and (2) outlining specific time frames for application review, EIS preparation and departmental decision.

PROPONENTS: Mr. Dennis Hemmer, representing the Department of State Lands, submitted written testimony (Exhibit 10) in favor of HB784.

Mr. Jim Mockler, representing the Montana Coal Council, stated he is a proponent of HB784 because it will advance planning and will streamline the strip mine permitting process. Mr. Mockler feels HB784 will allow everyone to know exactly what the rules of the game are.

Mr. Russ Brown, representing Northern Plains Resource Council, feels HB784 will give concerned citizens a better opportunity to participate.

Ms. Marge Green, representing the Montana Farm Bureau Federation, submitted written testimony (Exhibit 11) in favor of HB784.

Mr. Pat Wilson, representing MONTCO, feels the changes proposed by HB784 will clarify and decrease the amount of time involved in the permitting process. For these reasons, Mr. Wilson supports HB784.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Senator Gage feels the language contained on page 2, line 25, is poorly worded.

Senator Weeding questioned what type of procedure is used to determine whether an EIS is required. Mr. Hemmer stated his Department conducts a preliminary environmental review.

There being no further questions from the committee, the hearing on HB784 was closed.

CONSIDERATION OF HB705: Representative Rehberg, sponsor of HB705, stated HB705 will make people happy. HB705 will require the Department to make available to any person who requests in writing the contents of appraisals done on lands contemplated for exchange. HB705 also requires the Department of State Lands to send written notices by certified mail to lessees when an exchange of land is contemplated. Board approval is a condition of the sale of state lands; and, HB705 will make board approval a condition of the exchange of state lands.

Mr. Dennis Hemmer, representing the Department of State Lands, submitted written testimony (Exhibit 12) in favor of HB705.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Senator Anderson inquired about the criteria used in exchanging state lands and whether any preference was ever given. Representative Rehberg stated most times there is no preference; however, this issue could be addressed in another piece of legislation.

Senator Weeding had a problem with Section 4 and stated a lessee could be reimbursed for 100 percent when he is only entitled to 80 percent. Mr. Hemmer replied that what happens between the two lessees is of no consequence to the Department of State Lands.

There being no further questions from the committee, the hearing on HB705 was closed.

ACTION ON HB705: Senator Fuller moved HB705 BE CONCURRED IN. The motion carried.

ACTION ON HB769: Senator Shaw moved HB769 BE CONCURRED IN. The motion carried.

ACTION ON HB784: Senator Tveit moved HB784 BE CONCURRED IN. The motion carried.

FURTHER ACTION ON HB680: Senator Halligan moved the committee reconsider its action on HB680. Senator Halligan feels that HB680 is such an important bill that the committee should consider meeting to discuss this bill at length.

Chairman Eck stated she agreed and thought perhaps there was an amendment to the Statement of Intent which the committee should consider.

Senator Gage also agreed, stating he was also looking at some proposed amendments and would like to have the opportunity to speak with some people about issues which were not clearly brought out in the testimony given by the proponents and opponents.

Senator Weeding agreed with Senator Halligan's motion because he feels the committee should consider the impact on the railroads.

Chairman Eck reminded the committee that by agreeing to reconsider HB680, the committee would not be striking any of the amendments previously adopted.

Senator Halligan's motion carried, with Senator Daniels voting in opposition.

FURTHER CONSIDERATION OF HB698: Senator Shaw stated Montana is in an economic crisis, and he does not want to see any more restrictions placed on the mining industry.

There being no further business to come before the committee, the meeting was adjourned at 2:25 p.m.

Dorothy Eck

Senator Dorothy Eck, Chairman

ROLL CALL

Natural Resources COMMITTEE

48th LEGISLATIVE SESSION -- 1985 Date 3/15/85

SENATE SEAT #

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (Chairman	✓		
HALLIGAN, Mike (Vice Chairman)	✓		
WHEEDING, Cecil	✓		
MOHAR, John	✓		
DANIELS, M. K.	✓		
FULLER, David	✓		
CHRISTIAENS, Chris	✓		
TVEIT, Larry	✓		
GAGE, Delwyn	✓		
ANDERSON, John	✓		
SHAW, James	✓		
HARDING, Ethel	✓		

Each day attach to minutes.

DATE 031885

COMMITTEE ON Senate NAT Res

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Russ Brown	N.P.R.C.	698 769 784	✓	
Dennis Hemmer	Dept of State Lands	698 702 705 769 784	✓	
Pat Wilson	Montco/Thermal Energy	HB769 784	✓	
Gary Amestoy	Dept of State Lands	698 ~~769~~ 784 769	✓	
Jack Heyerman	~~Stat~~ N.P.R.C.	698	✓	
T.M. Collins	ASARCO INC	698	✓	
Ken Williams	Western Energy	769 784	✓	
Geo. Ochenski	ENV. INF. CENTER	698	X	
Jim Mockler	MT. Coal Council	769 784	✓	
Ward Shanahan	Chevron Corp.	698	X	
Mary Green	Mt. Power Bureau	769 784		

BRIEFING PAPER FOR REPRESENTATIVE HOLLIDAY

ON HOUSE BILL 784

This proposed legislation basically addresses two issues. They are (1) Administrative completeness and acceptability; and (2) outlining specific time frames for application review, EIS preparation and departmental decision.

The issue of administrative completeness and acceptability has long been a point of controversy between the applicant, the public, the Office of Surface Mining and the Department. The reason for the controversy stems from the fact that there are certain statutory requirements (i.e. public notice, opportunity for public comment, informal hearings and contested case hearings,) that accompany a completeness and acceptability determination by the Department. This amendment clarifies both the administratively complete and acceptability issue by (1) specifically outlining the time periods the Department must follow to make these determinations; and (2) outlining the actions and time frames that must be followed for public comments and/or objections.

The second issue addressed by this amendment are the specific time frames that the Department is allowed to (1) make a determination of whether an Environmental Impact Statement (EIS) will be required pursuant to Montana Environmental Policy Act (MEPA); and (2) review the application. At the present time, there is little correlation between the submission of an application and the determination of what kind of MEPA document will be required. The amendment proposes that the EIS determination be made within 90 days of application submittal. This provision will aid the applicant in determining the complexity and cost of the MEPA document that will be required and also provide the applicant with an idea of when the EIS will be completed (within 365 days of the initial determination.)

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 9
DATE 031885

At the present time, the Department initially has 120 days to review an application with the capability of extending the review period by an additional 120 days (total of 240 days). If at the end of the 240 days, the application is unacceptable, the department issues the applicant a deficiency letter that outlines where the application does not comply with the act and rules. At that point, the applicant revises and re-submits the application, this starts the 120 day, plus 120 day time frame over again. This process may occur several times in the application review process depending upon the quality of the application. The proposed legislation would reduce the review period to 120 days at which time the Department would either send a deficiency letter (a "unacceptability determination" by the Department) to the applicant or determine it acceptable. If the application is unacceptable, the applicant would then revise and re-submit the application for additional review and the 120 day time frame would start over. The improvement this amendment offers is the second 120 day frame would be eliminated thus providing a more timely review and ultimate decision by the department.

In summary, this bill would resolve the issue of "administrative completeness" and "application acceptability"; clarify specific application review and public comment/objection periods; place a specific time frame for the determination of the MEPA document; place a specific time frame on the completion of an EIS, if one is determined necessary; and place specific time frames on application reviews to allow for more timely permit decisions.

TESTIMONY FOR HOUSE BILL 784

FROM DENNIS HEMMER, COMMISSIONER OF STATE LANDS

The Department of State Lands supports H.B. 784 to amend Section 82-4-231, MCA for the following reasons:

1. The amendment provides specific guidance to the public, industry and the Department on how to determine when a strip mine application is "administratively complete" and "acceptable."

2. The amendment provides the public with better defined and statutory public comment periods and subsequent appeal processes.

3. The amendment clearly outlines the time frames that are required for specific phases of the application review; EIS determination and completion; and public notification and comment periods, thus streamlining the decision making process for the public, the applicant, and the state.

4. The amendment addresses concerns raised by citizens groups, industry and the Office of Surface Mining in regard to permit "completeness," "acceptability," review time frames, and application and EIS coordination.

In summary, the passage of this bill would help to streamline the permit decision making process, resolve concerns of applicants, citizen groups and the Office of Surface Mining pertaining to administrative completeness and acceptability and better define the process. The bill represents "good government" and I ask your favorable consideration.

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 10
DATE 031885
HB784

MONTANA
FARM BUREAU
FEDERATION

502 South 19th Bozeman, Montana 59715
Phone (406) 587-3153

TESTIMONY BY: Marg Green

BILL # HB 784 DATE March 18, 1985

SUPPORT XXXXX OPPOSE

Madame Chairman and members of the committee:

For the record I am Marg Green representing the Montana Farm Bureau Federation.

We support HB 784 in its revision of permit application review precedures, thereby ensuring proper and timely reclamation.

We urge the committe to give this bill a do-pass.

Thank you.

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 11
DATE 031885
BILL NO. HB784

Marg Green
SIGNED

STANDING COMMITTEE REPORT

MARCH 18 19 85

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 784

THIRD reading copy (BLUE color)
(HALLIGAN)

TO REVISE STRIP MINE PERMIT REVIEW PROCEDURES

Respectfully report as follows: That HOUSE BILL No. 784

BE CONCURRED IN

XXXXX

XXXXXXXX

Chairman.

HOUSE BILL NO. 784

INTRODUCED BY HOLLIDAY, HALLIGAN

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE STRIP MINE PERMIT APPLICATION REVIEW PROCEDURES; REVISING TIME FRAMES; AMENDING SECTION 82-4-231, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by his operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation,

all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which shall contain the reclamation plan, shall be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items which the application must

REFERENCE BILL

address. The application shall be presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, he shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed

operation ~~after--adequate--public--notice~~ within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference shall not preclude the department from proceeding with its review of the application as specified in subsection (8). ~~The-department-shall-notify-the applicant--by--certified--or-registered-mail-within-120-days after-receipt-of-the-complete-application-if-it-is-or-is-not acceptable.-The--department--may--extend--the--120--days--an additional--120--days--upon--notification-of-the-operator-in writing.-The-department-shall-make-written-findings-granting or-denying-the-permit-or-revision-application-in-whole-or-in part.-If-the-application-is-not-acceptable,--the--department shall-set-forth-the-reasons-why-it-is-not-acceptable,-and-it may--propose--modifications,--delete--areas,--or--reject-the entire-application.-A-landowner,--operator,--or--any--person with-an-interest-that-is-or-may-be-adversely-affected-may-by written--notice--request-a-hearing-by-the-board.-The-hearing shall-be-held-within-30-days-of-the-request.--No-person--who~~

~~presided--at--the--informal-conference-may-either-preside-at the-hearing-or-participate--in--the--decision--thereon.--For purposes---of---the---hearing,--the--board--may--order--site inspections-of-the-area-pertinent-to--the--application.--The board--shall--notify--the--person-by-certified-or-registered mail-and-all-other-persons-by-regular-mail--within--20--days after--the--hearing--of-its-decision.-Every-reclamation-plan shall-be-subject-to-annual-review-and-modification.~~

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of ~~82-4-220~~ 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined

to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement within 365 days of the date of notice provided pursuant to subsection (5).

(d) Within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the

proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 10 days of the informal conference.

(f) The department shall prepare written findings granting or denying the permit or major revision application in whole or in part no later than 45 days from the date the application is determined acceptable or from the publication of the final environmental impact statement, whichever occurs later. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when such concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing by the board. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing shall be held within 30 days of the request. For purposes of a hearing, the board may order site inspections of the area pertinent to the application. The board shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon.

~~(3)~~(10) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas,

constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the board may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface-water and ground-water systems both during and after strip- or underground-coal-mining operations and during

reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to (ii)(A) of this subsection prior to commencement of strip- or underground-mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large

settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) such other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the department determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(q) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

~~(4)~~(11) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or

underground-mining operation in such a manner as to protect areas outside the permit area."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the board of land commissioners or the department of state lands to make rules on the subject of the provisions of this act is extended to the provisions of this act.

-End-